

**KENTUCKY PERSONNEL BOARD  
MINUTES OF DECEMBER 12, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on December 12, 2008, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Christine J. Goodmann, Chair  
Robert B. Frazer, Vice-Chair  
Betty Gibson, Member  
Lisa T. Hendricks, Member  
M. Suzanne Cassidy, Member  
Julie True, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD NOVEMBER 14, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chair Goodmann asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted. Ms. Cassidy seconded, and the motion carried 5-0. (Chair Goodmann does not vote unless noted.) The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Sipek stated that the Board Members have received copies of a number of decisions from the Franklin Circuit Court. Mr. Sipek specifically wanted to point out the decision on *Department of Corrections v. JoAnn Searcy*. In Ms. Searcy's appeal the Franklin Circuit court ruled in her favor and ordered Corrections to reinstate her. However, Corrections, pending their appeal to the Court of Appeals, hired Ms. Searcy as a new employee, instead of reinstating her. During her second period of employment, Ms. Searcy attained status as a merit employee. After Corrections won their appeal at the Court of Appeals, Ms. Searcy was terminated from her position. Ms. Searcy appealed to the Personnel Board, stating that as a merit employee with status, she could not be dismissed without cause. The Board agreed and ordered her reinstated. Corrections filed an appeal with the Franklin Circuit Court and the Court affirmed the Board's Final Order and dismissed the appeal. Mr. Sipek advised that this is a lesson to Agencies that if an employee is brought back as a new hire and not reinstated as directed, that the employee can attain status.

Mr. Sipek stated that this was Ms. Hendricks' last Board meeting; whereupon, he presented her with a plaque commemorating her tenure with the Board and thanked her for her service. [Ms. Hendricks was appointed by Governor Fletcher to the Board on November 7, 2006, and served until December 12, 2008. Her term ends January 1, 2009.]

Chair Goodmann called for the Personnel Cabinet's Report.

#### 4. **PERSONNEL CABINET'S REPORT:**

Hon. Dinah Bevington, Acting Executive Director for Office of Legal Services, was present for the Personnel Cabinet and reported the following:

Ms. Bevington advised that at the last Board Meeting the Cabinet provided some amendments to the regulation on probationary periods [101 KAR 1:325], and look forward to getting the Board's response today.

Ms. Bevington stated that the Cabinet will be proposing regulations that will be brought about as a result of the Kentucky Human Resources Information System (KHRIS), which is set to go live March 31, 2009. The Cabinet hopes to bring these proposals before the Board at the January 2009 meeting.

Ms. Bevington advised that a meeting of the Governor's Employee Advisory Council [GEAC] was held this week. Union negotiations have been pushed up to March 2009 due to issues being faced at the Governor's Office.

At the conclusion of Ms. Bevington's report, Chair Goodmann asked the parties to come forward for oral argument.

#### 5. **ORAL ARGUMENTS:**

##### A. **Mark Smith v. Energy and Environment Cabinet and Ronald Matar (Request by Appellant)**

Present were counsel for Appellant, the Hon. Paul Fauri; counsel for Appellee, the Hon. Gordon Slone; and counsel for the Intervenor, the Hon. Vaughn Murphy. The parties answered questions from the Board.

##### B. **Dexter Warren v. Ky. State Fair Board (Request by both)**

Present were Appellant, Mr. Dexter Warren, *pro se*, and counsel for Appellee, the Hon. Ellen Benzing. The parties answered questions from the Board.

**6. CLOSED SESSION:**

Mr. Frazer moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Gibson seconded. Chair Goodmann stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:30 a.m.)

Mr. Frazer moved to return to open session. Ms. Gibson seconded and the motion carried 5-0. (10:55 a.m.)

**7. CASES TO BE DECIDED:**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

**A. Mark Smith v. Energy and Environment Cabinet and Ronald Matar**

Ms. Hendricks moved to defer this matter to the next Board meeting. Mr. Frazer seconded and the motion carried 5-0.

**8. SECOND CLOSED SESSION:**

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Cassidy seconded. Chair Goodmann stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:57 a.m.)

Ms. Hendricks moved to return to open session. Ms. Gibson seconded and the motion carried 5-0. (11:14 a.m.)

9. **CASES TO BE DECIDED:**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

B. Dexter Warren v. Ky. State Fair Board

Mr. Frazer moved to note Appellant's exceptions, Appellee's exceptions and Oral Arguments and to accept the Recommended Order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

C. Nancy Nusz, et al v. Education and Workforce Development Cabinet and Personnel Cabinet (7 appeals)  
**Deferred From November Meeting**

Ms. Hendricks moved to defer this matter to the next Board meeting. Ms. Cassidy seconded and the motion carried 5-0.

D. Tammy Buckler v. Justice and Public Safety Cabinet  
**Deferred From November Meeting**

Ms. True moved to accept the Final Order as altered and attached to these minutes sustaining to the extent Appellant's sick leave balance be restored. Chair Goodmann seconded and the motion carried 3-2, with Ms. Hendricks and Mr. Frazer opposing, Chair Goodmann voting, and Ms. Cassidy recusing.

E. James Mensing v. Justice and Public Safety Cabinet

Ms. True moved to defer this matter to the next Board meeting. Ms. Hendricks seconded and the motion carried 3-1, with Mr. Frazer opposing and with Ms. Cassidy recusing.

F. Kenny Abrams v. Finance and Administration Cabinet

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

G. Michael Bates v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order sustaining the appeal to the extent of paying back pay through the date of notice. Ms. Cassidy seconded and the motion carried 5-0.

H. Linda Carnes v. Transportation Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

I. Darlene Roberts v. Personnel Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

J. Chad Shake v. Justice and Public Safety Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 4-0, with Ms. Cassidy recusing.

K. Janie Short v. Cabinet for Health and Family Services

Ms. True moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0. [Note: The Board Members wanted a letter of concern to go to the Agency.]

L. Peggy Sweeney v. Justice and Public Safety Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 4-0, with Ms. Cassidy recusing.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

M. Elizabeth Venzin v. Cabinet for Health and Family Services

N. Tiffany Gardner v. Personnel Cabinet

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Cassidy seconded and the motion carried 5-0.

10. **WITHDRAWALS:**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 5-0.

- A. Kelly Durbin v. Personnel Cabinet
- B. Lynlee McKee v. Personnel Cabinet
- C. Karen Moore v. Justice and Public Safety Cabinet
- D. Margaret Raymond v. Education Cabinet
- E. Paul Scott v. Cabinet for Health and Family Services
- F. Linda Forbes v. Transportation Cabinet
- G. John Murphy v. Personnel Cabinet
- H. Stuart A. Reagan, Jr. v. Transportation Cabinet
- I. Julie A. Walker v. Transportation Cabinet

11. **SETTLEMENTS:**

Ms. Cassidy moved to consider the following settlements and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Ms. Hendricks seconded and the motion carried 5-0.

- A. Willa Thomas v. Cabinet for Health and Family Services (mediated)
- B. Andrew Teasley v. Tourism, Arts and Heritage Cabinet (mediated)

12. **OTHER**

[Note: Ms. Gibson left the Board Meeting at approximately 11:20 a.m. and did not vote on either the Amendment to 101 KAR 1:325 or the Board Vacancy.]

Amendment to 101 KAR 1:325 (probationary periods)

Mr. Crocker reviewed the changes with the Board Members.

Ms. Hendricks moved to accept the amendment to 101 KAR 1:325. Ms. Cassidy seconded and the motion carried 3-1 with Mr. Frazer opposing.

13. **THIRD CLOSED SESSION:**

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. True seconded. Chair Goodmann stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; deliberations regarding individual adjudication, and discussions that might lead to the appointment of a member. The motion carried 5-0. (11:25 a.m.)

Mr. Frazer moved to return to open session. Ms. Cassidy seconded and the motion carried 5-0. (11:57 a.m.)

14. **OTHER:**

Board Vacancy

Mr. Frazer moved to appoint Mr. Larry Gillis to be the Merit Employee Board Member. Ms. Cassidy seconded and the motion carried 3-0, with Ms. True abstaining.

Chair Goodmann advised that she will not be present at the January 9, 2009 Board Meeting. Vice-Chair Frazer will preside over the January Meeting.

There being no further business, Mr. Frazer moved to adjourn. Ms. Hendricks seconded and the motion carried 4-0. (Noon)

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Christine J. Goodmann, Chair

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Robert B. Frazer, Vice-Chair

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Betty Gibson, Member

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Lisa T. Hendricks, Member

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Suzanne Cassidy, Member

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Julie True, Member